IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11661 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHANBHAI AMBALAL PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11661 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR DP JOSHI, ASSTT. GOVERNMENT PLEADER for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 31/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of

an order dated 24.11.2001 passed by the District Magistrate, Sabarkantha in exercise of powers under Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act. The authority observed that the activities of the petitioner are prejudicial to the maintenance of supplies of food-grains under the public distribution system and therefore, in order to immediately prevent him from doing the illegal activities, he is required to be detained under PBM. After considering various documents, the authority passed the impugned order.

2. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India on various grounds stated in the petition. However, learned Advocate Mr. Prajapati appearing for the petitioner has restricted his argument to the fact that many of the documents supplied to the detenu are not legible. This has infringed the right of the detenu of making an effective representation and therefore, his continued detention would be vitiated.

3. Learned Assistant Government Pleader Mr. D.P. Joshi who represents respondent Nos. 1, 2 and 3 has opposed to this petition. Respondent No.4 Union of India is represented by Mrs. Dawawala. Affidavits-in-reply are filed on behalf of the respondents.

4. Learned Advocate Mr. Prajapati has drawn attention of this Court to several documents which are not legible. These documents are shown to learned AGP Mr. Joshi and he is also not in a position to challenge the factum of illegibility of the documents. In this factual scenario, it has to be accepted that the petitioner was deprived of his right of making an effective representation and his continued detention would therefore be vitiated. The petition therefore deserves to be allowed and the same is allowed.

5. Order of detention dated 24th November, 2001 passed by the District Magistrate, Sabarkantha is quashed and set aside. Detenu Mohanbhai Ambalal Prajapati be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas